

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.258 OF 2007

Ashok Manohar Gadkari ...Applicant

Versus

Helan Denis Barratto ...Respondent

Shri S.K.Shinde with P.R.Arjunwadkar for the Applicant.

**CORAM : ABHAY S.OKA, J.
DATED : JUNE 16, 2007.**

P.C.:

1. Submissions of the learned counsel appearing for the Applicant were heard on the last date. The revision Applicant is the tenant and Respondent who is the landlord has filed a suit for eviction. The suit property is room No.10 in a chawl. According to the case of the Respondent, the revision Applicant was in arrears of rent. The suit was filed on the ground of arrears of rent, acquisition of suitable residence, carrying out permanent construction. The said suit was filed under the provisions of Maharashtra Rent Control Act, 1999. The trial Court declined to grant a decree for possession. In the Appeal preferred by the Respondent landlord, the District Court has passed decree on the ground of arrears of rent.

2. The suit is based on notice dated 05th January, 1999. The arrears of rent claimed by the Respondent are for the period between 01st February, 1982 till 31st

December, 1998. The Appellate Court held that the notice of demand dated 05th January, 1999 was duly served to the revision Applicant. The Appellate Court held that the Revision Applicant was entitled to file a suit for eviction on the basis of the said notice claiming a decree under section 15 of the Maharashtra Rent Control Act, 1999 (the said Act of 1999). The Appellate Court held that it is an admitted position that within a period of 90 days from the date of service of summons of the suit, the revision Applicant tenant has neither paid or tendered in the court the standard rent together with simple interest on the amount of arrears at 15 per cent per annum. The Appellate Court, therefore, passed a decree under section 15 of the said Act of 1999.

3. The submission of the learned counsel appearing for the revision Applicant is that on 05th January, 1999 when the suit notice was issued by the Respondent, the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to the said Act of 1947) were in force. He pointed out that the scheme of the said Act of 1947 in so far as decree on the ground of default is concerned is completely different from the scheme of the said Act of 1999. He pointed out that on 31st March, 2000 the said Act of 1999 came into force and the said Act of 1947 stood

repealed. He submitted that suit notice was issued on 05th January, 1999 in terms of sub section 2 of section 12 of the said Act of 1947 and therefore, suit invoking the provisions of section 15 of the said Act of 1999 was not at all competent on the basis of the said notice as the said notice is not in conformity with the requirement of section 15 of the said Act of 1999. Referring to provisions of section 58 of the said Act of 1999, he submitted that what has been saved is the pending proceedings under the said Act of 1947 and therefore, the suit could not have been validly filed on the basis of a notice dated 05th January, 1999 which was issued under the repealed Act of 1947. I have considered the submissions made by the learned counsel appearing for the Petitioner.

4. Sub section 2 and Sub section 3 of section 12 of the said Act of 1947 (as amended by Maharashtra Act No.18 of 1987) read thus:

"(2) No suit for recovery of possession shall be instituted by a landlord against tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been

served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882.

(3) No decree for eviction shall be passed by the Court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, on the first day of hearing of the suit or on before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and together with simple interest on the amount of arrears of such standard rent and permitted increases at the rate of nine per cent per annum; and thereafter continues to pay or tenders in Court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the Court:-

. Provided that, the relief provided under this sub-section shall not be available to a tenant to whom relief against forfeiture was given in any two suits previously instituted by the landlord against such tenant".

5. The only requirement under the said Act of 1947 was that a notice of demand of standard rent should be served upon the the tenant in the manner provided under section 106 of the Transfer of Property Act, 1882. The section provides that suit on the basis of the notice could be filed on expiry of period of one month next after notice in writing of the demand is served upon the tenant. There was no requirement under section 12 that notice should be in a particular form and that notice should mention a specific period within which arrears must be paid. The only requirement was that notice of demand must be served in a mode recognised by the said Act of 1882.

6. Sub section 2 and 3 of section 15 of the said Act of 1999 read thus:

"(2) No suit for recovery of possession shall be instituted by a landlord against the tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of ninety days next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property

Act, 1882 (IV of 1882).

(3) No decree for eviction shall be passed by the Court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in Court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen per cent per annum; and thereafter continues to pay or tenders in Court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the Court".

7. The condition precedent for filing a suit under the section 15 of the said Act of 1999 is of service of notice of demand of standard rent and permitted increases in a manner provided under section 106 of the said Act of 1882. Sub section 2 provides that no suit shall be instituted on the ground of non payment of rent until expiration of ninety days next after notice in writing is served in accordance with section 106 of the Transfer of Property Act, 1882. Sub section 3 provides that no decree for eviction shall be passed by the Court

if within a period of 90 days from the date of receipt of the summons of the suit, the tenant pays or tenders in the Court the standard rent and permitted increases together with simple interest on arrears at the rate of 15 per cent per annum and thereafter continues to deposit the rent regularly. It is very difficult to read in section 15 a requirement that the notice of demand which is a condition precedent for filing a valid suit under section 15 must be issued after coming into force of the said Act of 1999. The only requirement of the suit is that there has to be a notice of demand of standard rent and permitted increases served in a particular manner. Therefore, the submission that the notice of demand issued on 05th January, 1999 was specifically under the said Act of 1947 cannot be accepted. Requirement of sub section 2 of section 15 of said Act of 1999 is satisfied by the notice dated 05th January, 1999 as the said notice is undisputedly a notice of demand of standard rent which is served in accordance with the said Act of 1882. Therefore, the suit was validly filed on the basis of the said notice.

8. It is an admitted position that within a period of 90 days from the date of service of summons of the suit, the revision Applicant-tenant did not pay or tender in Court the entire arrears of rent together with simple interest at the rate of 15 per cent per annum.

In view of this position, revision Applicant is not entitled to a relief against forfeiture as provided under sub section 3 of section 15. The revision Applicant was in arrears since the year 1982. Therefore, it is very difficult to find fault with the decree passed on the ground of default.

9. The second submission made in this revision Application is that the suit premises are situated in a slum area under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. Reliance was placed on photo pass issued by the Municipal Corporation in favour of the revision Applicant. The said submission has no merit. The revision Applicant has not placed on record a notification issued under section 4(1) of the said Act of 1971 to show that the land in question was notified as a slum area. Apart from the notification, no other evidence was produced to show that a declaration has been validly made under section 4(1) of the said Act. Hence, there is no merit in the revision Application and the same is rejected.

10. On the prayer made by the learned Advocate for the Applicant, decree for possession shall not be executed for a period of three months subject to condition that revision Applicant will not create any third party interests and will not part with possession

and will continue to deposit amount equivalent to rent
in the trial Court.

JUDGE